

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being deposited via facsimile to The Honorable Commissioner in the United States Patent and Trademark Office, Attention: Maureen Wallenhorst whose telephone number is (571) 272-1266 and centralized facsimile number is (703) 872-9306 on May 6, 2005.


David H. Brinkman, Reg. No. 40,532 Date 5/6/05

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Ken K. Tseung et al.
Serial No.: 09/994,458
Filed: November 26, 2001
Group Art Unit: 1743
Confirmation No.: 9498
Examiner: Wallenhorst, Maureen
Title: **AUTOMATED TISSUE STAINING SYSTEM AND REAGENT CONTAINER**
Our Ref No.: LABV-04

Cincinnati, Ohio 45202

May 6, 2005

Mail Stop AF
Commissioner for Patents
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Sir:

RECORD OF TELEPHONIC INTERVIEW AND REQUEST FOR WITHDRAWAL OF FINALITY OF OFFICE ACTION

Applicants' counsel appreciates the courtesy extended by Examiner Wallenhorst during the telephone interview conducted on May 5, 2005. During that interview, the pending claims were discussed in view of the newly cited

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Andersen et al. reference. Examiner agreed that Andersen et al. taken alone, or in combination with the other prior art of record, fails to teach or suggest the particular configuration of the reagent container recited in independent claim 15, including the concave well with a nadir.

While Applicants' counsel submits that Andersen et al. further fails to teach or suggest a reagent container having a nadir which forms the lowermost portion of the reagent container, and wherein the nadir is aligned with the access opening for the reasons fully set forth in Applicants' After Final Amendment mailed on April 11, 2005, Applicants' counsel offered to amend independent claim 26 to further recite the base wall has a concave well with a nadir as presently recited in independent claim 15 to clearly distinguish over the prior art of record. Applicants have filed on even date herewith a Supplemental After Final Amendment to amend independent claim 26 as discussed during the interview. Applicants' counsel submits that such an amendment does not raise new issues which would require further consideration by Examiner since that feature is recited in independent claim 15 and was considered by Examiner during the prior examination.


In view of Examiner's agreement that the prior art of record does not teach or suggest the reagent container as claimed in the After Final Amendment mailed on April 11, 2005, which claims were submitted without amendment, Applicants respectfully request that the finality of the Office Action mailed on February 10, 2005 be withdrawn pursuant to M.P.E.P. §706.07(e) and 37 C.F.R.

1.116(a). A notice of withdrawal of the finality of the February 10, 2005 Office Action is respectfully requested before May 10, 2005 (the set three month period for response to the Office Action mailed on February 10, 2005).

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

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